JOHN WATKINS Esq; *Appellant.* *JOHN PRICE* Esq; *Respondent.*

The Respondent's Case.

Easter Term. *An.* 12. *W.* 3. THE Respondent in *Easter* Term, in the Twelfth of King *William* the Third, brought his Bill in the Court of *Exchequer* against the Appellant, setting forth that he had let several Tenements to the Appellant at 28 *l.* 10 *s. per Ann.* And that he had granted to the Appellant several Coal Mines for Ten Years, paying to the Respondent 2 *s.* 6 *d.* for every Weigh of Coals. And that the Appellant was Indebted to him for Goods sold, Monies receiv'd, and upon several other Accounts.

THAT the Appellant and his Brother being bound for the Respondent for 200 *l.* and 55 *l.* lent by the Appellant's Father for the Security of these Monies, the Respondent confess'd a Judgment for 500 *l.* to the Appellant's Father and Brother.

THAT the Appellant as well by the Rent of the Lands which he held from the Respondent, and by Money due for Coals, Timber, and other Goods, and by several Sums of Money paid to him by the Respondent and his Order, had receiv'd more Money than would satisfy the said Judgment, and all Monies due to the Appellant, and that therefore the Judgment ought to be discharg'd.

THAT nevertheless the Appellant had extended the Respondent's Lands upon the said Judgment, and had also by Surprise got a Conveyance from him of the Royalties of the *Mannors* of *Gillibion* and *Walterstone.*

THEREFORE that the Appellant might come to an Account with him, and the Judgment might be set aside, or Satisfaction acknowledg'd, and the Respondent reliev'd, was the Scope of the Bill.

TO which Bill the Appellant put in his Answer, and submitted to go to an Account for the Matters in the Bill.

30 *June* 1703. Cause hear'd. AND the Cause being at Issue, and several Witnesses examin'd, the same came to be heard the 30th Day of *June* 1703.

WHEREUPON the Court of *Exchequer* did amongst other Things Decree that both Parties should go to an Account, and the Appellant was to be allow'd what he or his Father, or Brother had paid for the Respondent with Interest, and the Deputy was to discount and allow to the Respondent what was due to him from Time to Time for his Rent, and for Monies receiv'd by the Appellant for the Respondent's Use, and what was due for Coals, Timber, and otherwise, and all Parties were to have just Allowances.

First Report made 29 *March* 1706. PURSUANT to which Decree both Parties having attended the Deputy Remembrancer, after several Delays made by the Appellant, the Deputy on the 29th Day of *March* 1706, made his Report, to which the Appellant having put in Exceptions, it was referr'd back to the Deputy to review his Report, which he accordingly did,

11. *June* 1706. Second Report. and made his second Report on the 11th Day of *June* 1706, whereby he reported due to this Respondent after all Deductions and Allowances, the Sum of 405 *l.* 14 *s.*

19. *June* 1706. Last Report confirm'd. THE Report was confirm'd by the Decree of the Court, no Exceptions being put in thereto by the Appellant, and the Appellant was Decreed to pay the said Sum of 405 *l.* 14 *s.* and to release the Judgment.

AFTER which the Appellant being serv'd with the Decree, stood out all Process of Contempt till he was Arrested upon a Commission of Rebellion; and thereupon gave Security to perform the Decree.

Trinity Term, 1707. Bill of Review. BUT instead thereof, for further Delay, he brought his Bill of Review in the Court of *Exchequer*, to which the

Michaelmas Term 1707. Hearing on Review. Respondent having demurr'd, the Demurrer upon Arguing thereof was allow'd, and the Decree confirmed, and humbly hopes that the allowing the Demurrer, and confirming the said Decree, is just and reasonable, and that the said Decree and the said Order for confirming the same, shall not be set aside or revers'd.

FOR as to the Objection made in the Appeal against the said Decree, that the Respondent is allow'd a Sum of Money for Goods for which the Appellant had paid, and that there is no Proof to warrant such a Charge.

IT is humbly offer'd for Answer,

I. THAT it is not one of the Errors assign'd in the Bill of Review, and 'tis conceiv'd with great Submission, that he ought not to be permitted to make any Objection to the Decree which was not assign'd for Error in the Bill of Review.

II. 'TIS a Mistake in Point of Fact, for it appears by his Answer, and the Proofs in the Cause that he had those Goods, and there is no Proof that he paid for them.

AND as to the Errors assign'd by the Bill of Review there is not one against the Decree it self, but they are all Objections to the Deputy's Report, that the Deputy did not allow him several Sums of Money which he pretends ought to have been allow'd him, and 'tis humbly offer'd, that if there had been any Mistake in the Deputy's Report, and that the Deputy had not made him such Allowances as he ought, yet that cannot be assign'd as an Error in the Bill of Review.

BECAUSE the only Way to rectify Mistakes in the Deputy's Report, is by taking Exceptions thereto. And it appears by the Proceedings in the Cause that the Appellant did take Exceptions to the first Report made by the Deputy, and there was Time given him to take Exceptions to the second Report, but he wav'd Excepting thereto, and suffer'd the Report to be confirm'd, and after a Report is confirm'd no Exceptions can be made thereto by Bill of Review.

EVERY Error assign'd against a Decree by Bill of Review ought to appear in the Record it self; and it cannot appear to the Court whether Allowances made by the Deputy in the Report are just and reasonable or not, because the Proofs in the Cause which are the Ground and Foundation of such Allowances are not enter'd upon the Record.

WHEREFORE inasmuch as the Appellant having acquiesced in the Report, and put in no Exceptions, it is altogether irregular and inconsistent with the Rules of Equity to alledge or insist upon any such pretended Errors, it is therefore humbly Pray'd the said Decree and Orders may be confirm'd, and the Respondent may have good Costs for his Vexation.

Ja. Grove.

Con. Phipps.

The Respondent's Cafe.

John Watkins Esq; *Appellant.*

John Price Esq; *Respondent.*

To be heard the 8th Day of
January 1707.